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APR 17 2006

OFFICE OF PETITIONS

In re Application of :
Matthew Levine :
Application No. 09/900,787 : DECISION
Filed: July 6, 2001 : ON PETITION
For: CHART RECORDER PROGRAMMING :
INTERFACE :

This is a decision in response to the Request for Reconsideration of the Holding of Abandonment (MPEP § 711.03), filed September 6, 2005. The correspondence is properly treated as a Petition to Withdraw Holding of Abandonment under 37 CFR 1.181.

The petition is **dismissed**.

Background

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

Background

The above-identified application became abandoned as a result of a Decision by the Board of Patent Appeals and Interferences ("the Board"), mailed May 18, 2005. No claims were allowed.

Applicant filed an Amendment on July 21, 2005 (Certificate of Mailing dated July 18, 2005).

Applicant files the instant petition and asserts that the Amendment was a timely and proper reply to both the final Office action and the

Applicable Statute, Rules and MPEP

MPEP 1214.07 Reopening of Prosecution

37 CFR 1.198. Reopening after a final decision of the Board of Patent Appeals and Interferences.

When a decision by the Board of Patent Appeals and Interferences on appeal has become final for judicial review, prosecution of the proceeding before the primary examiner will not be reopened or reconsidered by the primary examiner except under the provisions of § 1.114 or § 41.50 of this title without the written authority of the Director, and then only for the consideration of matters not already adjudicated, sufficient cause being shown. Sometimes an amendment is filed after the Board's decision which does not carry into effect any recommendation made by the Board and which presents a new or amended claim or claims. In view of the fact that prosecution is closed, the appellant is not entitled to have such amendment entered as a matter of right. However, if the amendment is submitted with a request for continued examination (RCE) under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e), prosecution of the application will be reopened and the amendment will be entered. See MPEP § 706.07(h), paragraph XI. Note that the RCE practice under 37 CFR 1.114 does not apply to utility or plant patent applications filed before June 8, 1995 or to design applications. See 37 CFR 1.114(d) and MPEP § 706.07(h), paragraph I. If the amendment obviously places an application in condition for allowance, regardless of whether the amendment is filed with an RCE, the primary examiner should recommend that the amendment be entered, and with the concurrence of the supervisory patent examiner, the amendment will be entered. Note MPEP § 1002.02(d). (Emphasis supplied)

A review of the Amendment by the Examiner reveals that the Amendment fails to place the application in condition for allowance.

Accordingly, the petition is dismissed.

Applicant is strongly urged to file a petition stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in was "unavoidable." An "unintentional" petition

under 37 CFR 1.137(b) must be accompanied by the required fee, currently \$750.00.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay can not make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revive under 37 CFR 1.137(b).

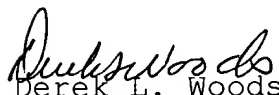
Further correspondence with respect to this matter should be addressed as follows:

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By FAX: (571) 273-8300
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Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.


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